

REQUEST FOR PROPOSALS

**TO SERVE AS SPECIAL ASSISTANT BOND COUNSEL
TO THE OFFICE OF ATTORNEY GENERAL AND THE
MARYLAND INDUSTRIAL DEVELOPMENT FINANCING AUTHORITY
OF THE MARYLAND DEPARTMENT OF COMMERCE**

**Responses due no later than
4:00 p.m. on October 5, 2016**

Contract Officer:
Barbara Curnin Kountz
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September 8, 2016

Dear Interested Party:

The Office of Attorney General (the “OAG”) is soliciting proposals from qualified law firms experienced in municipal finance to assist the OAG in advising the Maryland Department of Commerce (the “Department”) of the State of Maryland (the “State”), and its agencies and divisions, in particular the Maryland Industrial Development Financing Authority, a body corporate and politic and an instrumentality of the State (“MIDFA”), on various matters relating to the Department’s bond finance program. This work may include the issuance and sale of one or more series of limited obligation economic development revenue bonds, or any other bonds which the Department may hereafter be authorized to issue, as well as any refunding bonds, notes, certificates of participation, or other obligations of any kind which are now or may hereafter be authorized or utilized (collectively, the “Bonds”) to finance various economic development projects, as authorized by and in accordance with various sections (described in more detail below) of the Economic Development Article of the Annotated Code of Maryland, as amended, as well as the Internal Revenue Code of 1986, as amended, and related regulations (the “Code”) and all other applicable laws or regulations relating to the issuance of the Bonds. The work also may include negotiating, drafting or reviewing various documents, legislation, regulations, and procedures with regard to the issuance of the Bonds; rendering certain legal opinions; verifying compliance with the Code and other applicable federal, State and municipal laws and regulations promulgated thereunder; providing advice on matters with respect to bonds previously issued; and, generally, providing upon request advice on the legality and structure of, and documentation for, all the Department’s bond financing matters and financing options as well as for other financing matters which affect the Department.

As a result of this RFP, the Attorney General expects to select two or more Offerors to enter into contracts for these services.

Background

The Department is a principal department of the State organized pursuant to the Economic Development Article, Sections 1-101 *et. seq.* of the Annotated Code of Maryland, as amended (the “Commerce Act”). MIDFA, an agency of the Department, is the Department’s economic development financing authority and is authorized to issue taxable and tax-exempt revenue bonds pursuant to the Economic Development Article, Section 5-401 *et. seq.* of the Annotated Code of Maryland, as amended (the “MIDFA Act”) and the Economic Development Article, Sections 12-

101 *et. seq.* of the Annotated Code of Maryland, as amended (the “Revenue Bond Act” and together with the MIDFA Act, the “Act”).

MIDFA issues tax-exempt and taxable revenue bonds for qualified businesses and 501(c)(3) not-for-profit entities and other private activity bonds permitted by the Act and the Code. MIDFA also insures bonds issued by itself or other public bodies of the State pursuant to the MIDFA Act under its Industrial Development Fund.

Scope of Work

Purpose: The Department is seeking to retain the services of special assistant bond counsel to assist and advise members of the OAG in connection with the issuance of revenue bonds by MIDFA, as well as related aspects of credit enhancements given by MIDFA, and existing and potential future bond financing programs. Issuance may include a full range of available financing techniques, including the following: instruments which may be sold in the taxable and tax-exempt bond markets or commercial paper markets; instruments which may be secured by letters of credit, bond insurance, or other credit enhancement; instruments which may be marketed as pooled issues; and other instruments for which markets may develop during the term of the Contract. The attorneys selected as bond counsel will work closely with the Department’s staff, the Assistant Attorneys General representing the Department (the “Department’s Counsel”), the Department’s bond underwriting team, and their counsel and other parties necessary to issue and sell MIDFA’s Bonds, including borrowers, bond rating agencies, financial advisors, bond insurers, trustees and financial institutions and their counsel.

General Statement of Services: With the prior concurrence of or at the request of the Department’s Counsel and with the concurrence of the Department, the Contractor shall provide the full range of bond counsel services to the Department on a continuing basis throughout the term of the Contract. Service will relate to new Bond issuances and the financing of new facilities and programs, and also to ongoing compliance in connection with MIDFA’s previous Bond issues.

Services. Without limiting the generality of the above section and subject to the provisions of the Contract, throughout the term of the Contract, the Contractor shall provide the following services:

A. Advise the Department to enable MIDFA to issue tax-exempt and taxable bonds or any other debt obligations in accordance with applicable laws presently enacted or which may be enacted in the future and the customs and practices regarding such issues.

B. Advise the Department in structuring or improving any financing programs, including tax-exempt and taxable bond financings, credit enhanced financings, other forms of debt or equity financings and any other creative financings.

C. Advise the Department in conducting the competitive sale of Bonds, negotiating bond purchase agreements with underwriters, and negotiating direct purchase agreements with banks and financial institutions.

D. Draft or provide advice on bond documents, preliminary official statements, official statements, trust agreements, indentures, bond purchase agreements, and any other documents

relating to MIDFA's Bonds, as described above, or other debt obligations or to the financing of the Department's programs.

E. Prepare or participate in preparing all resolutions, ordinances, agreements, certificates, closing documents and related documents for each of the respective Bond issues, as well as for any other kind of related financings, and, if requested, produce and distribute transcripts in a timely and cost efficient manner after closing.

F. Provide advice on and analysis of the Act, the Code, other State law, relevant federal, state, and municipal law, and any proposed related federal, state or municipal legislation or regulations.

G. Assist the Department, and any contractor or agent of the Department, to enable the Department to comply with, and verify the Department's compliance with, applicable federal and State law and regulations, including as an example, arbitrage and arbitrage rebate requirements for all of MIDFA's Bond issues.

H. Render opinions concerning the validity of MIDFA's Bonds and, if applicable, the tax-exempt status of such Bonds from federal, State, and local taxes, and other related matters.

I. Render supplemental opinions as the Department or the Department's Counsel may require.

J. Advise the Department on the administration of its portfolio of bonds, including rebate considerations for federal tax purposes.

K. Perform due diligence investigation as may be required or requested.

L. Advise the Department on the application of federal and state securities laws to bond issuance, portfolio management, secondary market disclosure, and on the Department's primary and continuing disclosure obligations, including the timing and adequacy of disclosure.

M. Provide analysis of, advice on, and other legal services on those aspects of the fields of municipal finance, federal and State tax, real estate, securities, insurance and banking law or other laws that relate to the Department's programs or activities or which are necessary for the proper performance of the services specified in this RFP.

N. Upon request, represent the Department at public hearings, administrative proceedings, or other proceedings arising out of the services set forth in this RFP.

O. Provide advice and Department staff training on federal laws or regulations related to tax and securities laws, including but not limited to provisions governing disclosure and registration requirements, continuing disclosure, post-issuance compliance, and record keeping that relate to the sale of Bonds.

P. Provide advice to the Department and the OAG in connection with any audits by or request for information from the Internal Revenue Service (the “IRS”) and represent the Department in any negotiations with the IRS or any proceedings contesting compliance by the Department with federal tax law or regulations.

Q. Provide other related advice and services as the OAG and the Department may require.

With respect to the services described above, the selected Offeror(s) may not devote substantial time to the service or incur substantial reimbursable expense absent the prior authorization of the OAG and the Department.

General Conditions

The Contractor will be paid on the basis of a blended fixed hourly rate to be agreed upon plus permitted reimbursable expenses. The Contractor will be paid either from proceeds of the Bond issue, by the applicants for MIDFA’s Bonds, or by the Department from existing fund sources. The Attorney General reserves the right to select more than one firm to handle this representation. In addition, Assistant Attorneys General may handle all or portions of the work. The Attorney General does not promise or guarantee any minimum level of hours of work or compensation during the term of the Contract and the Attorney General does not have funding to pay fees to bond counsel.

The OAG is an equal opportunity employer, committed to diversity in the workplace. Consistent with that commitment, the OAG desires that socially and economically disadvantaged individuals and their firms, including certified minority business enterprises (“MBEs”), as defined in §14-301 of the Procurement Article, have the maximum practicable opportunity to participate in the Contract. When permitted or required by law, the OAG encourages the use of socially and economically disadvantaged individuals and their firms, including MBEs, for contracting and subcontracting opportunities. Special assistant bond counsel should desire to promote and undertake efforts to reach out to socially and economically disadvantaged individuals and their firms, including MBEs, to maximize their participation in the Contract.

This RFP, all proposals, and the resulting contracts are subject to the Maryland Public Information Act. Offerors must specifically identify those portions of their proposals, if any, which they deem to include confidential, proprietary information or trade secrets and must provide justification why such material should not, upon request, be disclosed by the State under the Access to the Maryland Public Information Act, General Provisions Article, Title 5 of the Annotated Code of Maryland.

This RFP and any Contract entered into pursuant to this solicitation is not subject to the provisions of Division II of the Procurement Article or the State procurement regulations as set forth in COMAR Title 21 (collectively, the “Procurement Law”). Nonetheless, the requirements of the Procurement Law will be applied to this RFP and the Contract to the extent practicable and consistent with obtaining the best legal counsel for the State, all as determined in the sole discretion of the OAG’s Contract Officer. The dispute resolution and appeal procedures contained in the Procurement Law will not apply to this solicitation.

The OAG is not responsible for any expenses you may incur in connection with developing and submitting a proposal or for familiarizing yourself with the Department's statutes, programs or financings.

Interested persons who obtained this RFP by means of downloading electronic files of the RFP and attachments from the OAG website are required to send written notice to the Contract Officer of their name, mailing address, e-mail address, telephone and fax numbers so that they may be included in any future mailings.

The Contract Officer is the sole point of contact for this RFP. **Questions about this RFP may be submitted to the Contract Officer by email, no later than 4:00 p.m. on Monday, September 19, 2016, at barbara.kountz@maryland.gov.** Answers to questions will be provided to all interested parties. Answers will be provided, if possible, without disclosure of the identity of the person or party asking the question. There will be no pre-proposal conference.

We reserve the right to amend this RFP and any amendments will be mailed or e-mailed to all interested persons. We also reserve the right to cancel this RFP and notice of cancellation will be mailed or e-mailed to all interested persons.

The technical proposal and the price proposal must be submitted in separate, sealed envelopes. Please use the Price Proposal form (Attachment D) for your price proposal.

We invite you to submit a written proposal so that we can formally consider you for this engagement. We will consider proposals submitted by joint ventures (of no more than two entities) so long as the joint venture arrangement meets the needs of the OAG and the Department. By submitting a proposal, you accept all of the terms and conditions of this RFP. If selected, you will be expected to enter into the Contract, the form of which is attached as Attachment E. The terms and conditions of the Contract are not subject to negotiation. By submitting a response, you will be deemed to represent that your firm is not in arrears in the payment of any obligation due and owing the State, including the payment of taxes and employee benefits.

Technical Proposal

The Technical Proposal shall include the following information and shall be presented in the following order:

1. Legal name and principal place of business of the law firm making the proposal. Please indicate whether the firm is an MBE.
2. Name and address of the person designated as the contact person for purposes of this RFP and any resulting Contract. Please provide name, mailing address, e-mail address, telephone number and fax number of the contact person.
3. General information on the areas of law in which the law firm specializes.

4. Name, mailing address, e-mail address and telephone number of the individual who will head the team of attorneys and other para-professionals (paralegals, legal assistants, and law clerks) participating in this engagement (collectively, the “Legal Team”).

5. Information demonstrating compliance with the enclosed Minimum Qualifications (Attachment A).

6. Name and address of each attorney participating on the Legal Team and his or her respective position in the law firm. For each attorney, please submit a brief resume indicating relevant experience and in what jurisdictions the attorney is admitted to practice. Also, for each attorney, please indicate whether the person is a member of a group defined in the Procurement Article, § 14-301(j) or (k). Please indicate which member(s) of the Legal Team are members of the Maryland bar.

7. The proposed role of each person who will participate on the Legal Team, and the planned division of responsibilities among the members of the Legal Team. (**Note that the Contract does not permit substitutions in the bond team without the consent of the Contract Officer.**)

8. The following information which will be used to evaluate how the Offeror’s experience matches up with the needs of the OAG and the Department:

a. General Public Finance Experience. A detailed description of the Offeror’s experience in the field of public finance and the issuance of private activity bonds, revenue bonds, taxable bonds, and general obligation bonds. The description should include the approximate number and size of bonds in which the Offeror has participated in the last five years, the role of the Offeror, and how many of those issues were tax-exempt.

b. Selected Public Finance Experience. Information on not more than 10 bond issues that best demonstrate the Offeror’s capabilities to perform the services required under the Contract, and provide the following information regarding each issue: (1) the type (e.g. revenue, general obligation, tax-exempt, tax-credit or taxable bond, private activity bonds, etc.); (2) the name of the issuer; (3) the date and size of the issue; (4) private placement versus public issue; (5) the party represented (e.g. issuer, lender, bond purchaser, underwriter, borrower, municipality); and (6) the range of responsibilities, including the drafting of documents and participation as bond counsel (including whether the participation was as sole bond counsel or as co-bond counsel) or special tax counsel.

c. Creative Solutions. The Offeror must provide at least one but not more than three examples of creative or innovative techniques or solutions for legal or financing problems developed or put forth by the Offeror in connection with a tax-exempt financing (preferably of private activity bonds), and a brief description of the Offeror's involvement. The Offeror should also describe how its attorneys stay current regarding creative and innovative financing techniques and the tax issues arising from such techniques.

d. Tax Experience. A description of the nature and depth of the Offeror's experience with tax law, with particular reference to the tax aspects of revenue bonds.

e. Maryland Public Finance Experience. A list of all State agencies and political subdivisions for which the Offeror has served as bond counsel or other counsel during the last five years and identify in what capacity.

f. Related Legal Experience. A brief description of the Offeror's experience in areas of the law related to public finance, the granting and perfecting of valid and enforceable security interests on a wide variety of collateral, and the Department's mission and programs, including banking, bankruptcy, environmental, insurance, securities and real estate law. You may attach brief resumes of the attorneys who work in the areas described above, but only if they will be available to consult with and give advice to the Department and the OAG during the term of the Contract.

g. Stability of Offeror's Bond and Tax Group. In this section, the Offeror should summarize the Offeror's ongoing commitment to maintaining a bond practice/tax practice group within the Offeror's firm. Offerors should be prepared to discuss both managerial and financial commitments to these practice groups and to seminars and training for Offeror's staff on continuing developments in these areas in oral presentations (if any).

h. Rationale for Appointment. The Offeror should present the case for its selection as the firm to perform the services described in this RFP.

9. Names and telephone numbers of three clients (and respective contact persons for those clients) for whom you have provided services similar to those described in this RFP, with a brief description of the work performed. These persons will be considered as references and may be contacted by the OAG in its evaluation of the proposal.

10. Names and telephone numbers of contact persons at any units of the State for whom you have provided legal counsel in the last three years. These persons will be considered references and may be contacted by the OAG in its evaluation of the proposal.

11. A detailed description of the firm's procedure for checking conflicts of interest and whether there are any potential conflicts in representing the Department or the OAG in this matter. (See Attachment C.)

12. Completion of the enclosed bid/proposal affidavit (Attachment B-1) and the conflict of interest affidavit (Attachment B-2).

13. Written affirmation that the person(s) submitting the proposal is/are authorized to do so on behalf of the Offeror and certification that, to the best of his or her knowledge, the information submitted in the technical proposal is accurate, complete, and correct as of the date of the proposal.

Evaluation of the technical proposals will be as described below.

Price Proposal

The Price Proposal shall be submitted in a separate sealed envelope and shall contain blended fixed hourly rates that will be charged for the initial three-year term of the Contract and for any renewal term that is authorized. It shall include the following information:

1. The blended fixed hourly rate for all attorneys rendering services under the Contract; and

2. The blended fixed hourly rate for para-professionals (paralegals, legal assistants, and law clerks) rendering services under the Contract.

The Price Proposal shall be submitted using the form attached as Attachment D.

Price will be an important factor in the selection process but not necessarily the determining factor.

Evaluation and Selection

Technical proposals (and oral presentations, if any) will be evaluated before price proposals are opened. Please note that Offerors whose technical proposals do not meet the Minimum Requirements described in Attachment A may be deemed not reasonably susceptible for award and that the Offeror's technical and price proposals may not be evaluated. Technical merit will be given more weight than price in determining the Evaluation Committee's final ranking. After reviewing the price proposals, there may (or may not) be additional discussions with Offerors, including a request for best and final offers. For the technical evaluation, the Evaluation Committee will take into consideration the following factors (listed in descending order of

importance): (i) the proposed Legal Team's demonstrated experience and expertise in representing clients in financing transactions similar to those of the Department (as reflected in the written technical proposal and the oral presentation, if any); (ii) the price proposals; and (iii) the Offeror's conflict of interest policy. To the extent permitted by law, the participation of socially and economically disadvantaged individuals and their firms, including MBEs, may also be considered.

Contract award will be made to that Offeror, or Offerors, whose proposal contains the combination of those criteria offering the best overall service and value to the Attorney General and the State. Selection of bond counsel will be solely the decision of the Attorney General, with due regard given to the viewpoint of the Evaluation Committee. We reserve the right to reject any and all proposals, to waive informalities and minor irregularities in proposals, and to negotiate with any and all Offerors who submit them. Successful Offerors may be selected on the basis of initial written proposals without discussions with Offerors and without requesting a best and final offer, so please take care in submitting your technical and price proposals. It is anticipated that the Attorney General will select more than one Offeror to provide services under this RFP.

Five copies of your response to this Request for Proposals should be delivered to me at the following address: Barbara Curnin Kountz, Assistant Attorney General, Maryland Office of the Attorney General, Maryland Department of Commerce, 401 East Pratt Street, Baltimore, Maryland 21202 no later than 4:00 p.m. on October 5, 2016. The Technical Proposal and the Price Proposal must be submitted in separate sealed envelopes.

The OAG reserves the right to meet with qualified Offerors to discuss this RFP and the Offeror's proposal and ability to perform the proposed contract. We anticipate meeting qualified Offerors during the week of October 17, at the offices of the Maryland Department of Commerce, 401 East Pratt Street, Baltimore, Maryland 21202. If you are not available on any of those dates or if certain times are more convenient, please indicate that in your written proposal. We will try to accommodate your needs. The meeting will be approximately one hour, will be informal and will include substantive questions.

If you have any questions, please submit them in writing to Barbara Curnin Kountz, by email, at barbara.kountz@maryland.gov no later than 4 pm on Monday, September 19, 2016.

Thank you for your interest.

Sincerely,

Barbara Curnin Kountz,
Assistant Attorney General
Maryland Department of Commerce

Attachments:

- A – Minimum Qualifications
- B-1 – Bid/Proposal Affidavit (to be completed and returned with Technical Proposal)
- B-2 – Conflict of Interest Affidavit (to be completed and returned with Technical Proposal)
- C – Conflict of Interest Provisions
- D – Price Proposal Form (to be completed and returned in separate sealed envelope)
- E – Form Contract
- F – Form of Contract Affidavit

ATTACHMENT A
MINIMUM QUALIFICATIONS

The Offeror must meet all of the minimum requirements set forth below to be considered qualified.

1. Legal Team: One or more attorneys on the Legal Team must be admitted to practice in Maryland. In addition, the Legal Team must include at least one attorney who is a partner or equivalent who is listed as a municipal bond attorney in the most recent edition of the *Bond Buyers' Municipal Marketplace Directory*, at least one attorney who has acted within the past three years as bond counsel in at least one similar revenue bond transaction, and at least one attorney with substantive federal tax experience with private activity bonds.
2. Office. The Offeror maintains an office in the State of Maryland.
3. Insurance.
 - (i) The Offeror must maintain in full force and effect (during both the term of the Contract and thereafter for the entire period in which the Offeror may incur professional liability in connection with performance or failure to perform under the Contract) professional liability insurance in an aggregate amount of not less than Five Million Dollars (\$5,000,000), which liability insurance shall include coverage for practice in the fields of law related to the Contract (including securities law).
 - (ii) If the Offeror is a joint venture, and one party to the joint venture does not have such liability insurance, this requirement may be satisfied if the members of the joint venture include in their proposal evidence satisfactory to the Contract Officer, that all members of the joint venture will have such coverage as of the date the Contract commences, either through actual policies or the equivalent.
4. Public Ethics. The negotiation of or entering into the Contract must not give rise to a violation of the Public Ethics Law.

ATTACHMENT B-1
BID/PROPOSAL AFFIDAVIT

A. Authority

I HEREBY AFFIRM THAT:

I (print name) _____ possess the legal authority to make this Affidavit.

B. CERTIFICATION REGARDING COMMERCIAL NONDISCRIMINATION

The undersigned bidder hereby certifies and agrees that the following information is correct: In preparing its bid on this project, the bidder has considered all proposals submitted from qualified, potential subcontractors and suppliers, and has not engaged in “discrimination” as defined in §19-103 of the State Finance and Procurement Article of the Annotated Code of Maryland. “Discrimination” means any disadvantage, difference, distinction, or preference in the solicitation, selection, hiring, or commercial treatment of a vendor, subcontractor, or commercial customer on the basis of race, color, religion, ancestry, or national origin, sex, age, marital status, sexual orientation, or on the basis of disability or any otherwise unlawful use of characteristics regarding the vendor’s, supplier’s, or commercial customer’s employees or owners. “Discrimination” also includes retaliating against any person or other entity for reporting any incident of “discrimination”. Without limiting any other provision of the solicitation on this project, it is understood that, if the certification is false, such false certification constitutes grounds for the State to reject the bid submitted by the bidder on this project, and terminate any contract awarded based on the bid. As part of its bid or proposal, the bidder herewith submits a list of all instances within the past 4 years where there has been a final adjudicated determination in a legal or administrative proceeding in the State of Maryland that the bidder discriminated against subcontractors, vendors, suppliers, or commercial customers, and a description of the status or resolution of that determination, including any remedial action taken. Bidder agrees to comply in all respects with the State’s Commercial Nondiscrimination Policy as described under Title 19 of the State Finance and Procurement Article of the Annotated Code of Maryland.

B-1. Certification Regarding Minority Business Enterprises.

The undersigned bidder hereby certifies and agrees that it has fully complied with the State Minority Business Enterprise Law, State Finance and Procurement Article, §14-308(a)(2), Annotated Code of Maryland, which provides that, except as otherwise provided by law, a contractor may not identify a certified minority business enterprise in a bid or proposal and:

- (1) Fail to request, receive, or otherwise obtain authorization from the certified minority business enterprise to identify the certified minority proposal;
- (2) Fail to notify the certified minority business enterprise before execution of the contract of its inclusion in the bid or proposal;

- (3) Fail to use the certified minority business enterprise in the performance of the contract; or
- (4) Pay the certified minority business enterprise solely for the use of its name in the bid or proposal.

Without limiting any other provision of the solicitation on this project, it is understood that if the certification is false, such false certification constitutes grounds for the State to reject the bid submitted by the bidder on this project, and terminate any contract awarded based on the bid.

B-2. Certification Regarding Veteran-Owned Small Business Enterprises. The undersigned bidder hereby certifies and agrees that it has fully complied with the State veteran-owned small business enterprise law, State Finance and Procurement Article, §14-605, Annotated Code of Maryland, which provides that a person may not:

- (1) Knowingly and with intent to defraud, fraudulently obtain, attempt to obtain, or aid another person in fraudulently obtaining or attempting to obtain public money, procurement contracts, or funds expended under a procurement contract to which the person is not entitled under this title;
- (2) Knowingly and with intent to defraud, fraudulently represent participation of a veteran-owned small business enterprise in order to obtain or retain a bid preference or a procurement contract;
- (3) Willfully and knowingly make or subscribe to any statement, declaration, or other document that is fraudulent or false as to any material matter, whether or not that falsity or fraud is committed with the knowledge or consent of the person authorized or required to present the declaration, statement, or document;
- (4) Willfully and knowingly aid, assist in, procure, counsel, or advise the preparation or presentation of a declaration, statement, or other document that is fraudulent or false as to any material matter, regardless of whether that falsity or fraud is committed with the knowledge or consent of the person authorized or required to present the declaration, statement, or document;
- (5) Willfully and knowingly fail to file any declaration or notice with the unit that is required by COMAR 21.11.12; or
- (6) Establish, knowingly aid in the establishment of, or exercise control over a business found to have violated a provision of §B-2(1)—(5) of this regulation.

C. AFFIRMATION REGARDING BRIBERY CONVICTIONS

I FURTHER AFFIRM THAT:

Neither I, nor to the best of my knowledge, information, and belief, the above business (as is defined in Section 16-101(b) of the State Finance and Procurement Article of the Annotated Code of Maryland), or any of its officers, directors, partners, controlling stockholders, or any of its employees directly involved in the business's contracting activities including obtaining or performing contracts with public bodies has been convicted of, or has had probation before

judgment imposed pursuant to Criminal Procedure Article, §6-220, Annotated Code of Maryland, or has pleaded nolo contendere to a charge of, bribery, attempted bribery, or conspiracy to bribe in violation of Maryland law, or of the law of any other state or federal law, except as follows (indicate the reasons why the affirmation cannot be given and list any conviction, plea, or imposition of probation before judgment with the date, court, official or administrative body, the sentence or disposition, the name(s) of person(s) involved, and their current positions and responsibilities with the business):

D. AFFIRMATION REGARDING OTHER CONVICTIONS

I FURTHER AFFIRM THAT:

Neither I, nor to the best of my knowledge, information, and belief, the above business, or any of its officers, directors, partners, controlling stockholders, or any of its employees directly involved in the business's contracting activities including obtaining or performing contracts with public bodies, has:

(1) Been convicted under state or federal statute of:

(a) A criminal offense incident to obtaining, attempting to obtain, or performing a public or private contract; or

(b) Fraud, embezzlement, theft, forgery, falsification or destruction of records or receiving stolen property;

(2) Been convicted of any criminal violation of a state or federal antitrust statute;

(3) Been convicted under the provisions of Title 18 of the United States Code for violation of the Racketeer Influenced and Corrupt Organization Act, 18 U.S.C. §1961 et seq., or the Mail Fraud Act, 18 U.S.C. §1341 et seq., for acts in connection with the submission of bids or proposals for a public or private contract;

(4) Been convicted of a violation of the State Minority Business Enterprise Law, §14-308 of the State Finance and Procurement Article of the Annotated Code of Maryland;

(5) Been convicted of a violation of §11-205.1 of the State Finance and Procurement Article of the Annotated Code of Maryland;

(6) Been convicted of conspiracy to commit any act or omission that would constitute grounds for conviction or liability under any law or statute described in subsections (1)—(5) above;

(7) Been found civilly liable under a state or federal antitrust statute for acts or omissions in connection with the submission of bids or proposals for a public or private contract;

(8) Been found in a final adjudicated decision to have violated the Commercial Nondiscrimination Policy under Title 19 of the State Finance and Procurement Article of the Annotated Code of Maryland with regard to a public or private contract;

(9) Been convicted of a violation of one or more of the following provisions of the Internal Revenue Code:

(a) §7201, Attempt to Evade or Defeat Tax;

(b) §7203, Willful Failure to File Return, Supply Information, or Pay Tax,

(c) §7205, Fraudulent Withholding Exemption Certificate or Failure to Supply Information,

(d) §7206, Fraud and False Statements, or

(e) §7207 Fraudulent Returns, Statements, or Other Documents;

(10) Been convicted of a violation of 18 U.S.C. §286 Conspiracy to Defraud the Government with Respect to Claims, 18 U.S.C. §287, False, Fictitious, or Fraudulent Claims, or 18 U.S.C. §371, Conspiracy to Defraud the United States;

(11) Been convicted of a violation of the Tax-General Article, Title 13, Subtitle 7 or Subtitle 10, Annotated Code of Maryland;

(12) Been found to have willfully or knowingly violated State Prevailing Wage Laws as provided in the State Finance and Procurement Article, Title 17, Subtitle 2, Annotated Code of Maryland, if:

(a) A court:

(i) Made the finding; and

(ii) Decision became final; or

(b) The finding was:

(i) Made in a contested case under the Maryland Administrative Procedure Act; and

(ii) Not overturned on judicial review;

(13) Been found to have willfully or knowingly violated State Living Wage Laws as provided in the State Finance and Procurement Article, Title 18, Annotated Code of Maryland, if:

(a) A court:

(i) Made the finding; and

(ii) Decision became final; or

(b) The finding was:

(i) Made in a contested case under the Maryland Administrative Procedure Act; and

(ii) Not overturned on judicial review;

(14) Been found to have willfully or knowingly violated the Labor and Employment Article, Title 3, Subtitles 3, 4, or 5, or Title 5, Annotated Code of Maryland, if:

(a) A court:

(i) Made the finding; and

(ii) Decision became final; or

(b) The finding was:

(i) Made in a contested case under the Maryland Administrative Procedure Act; and

(ii) Not overturned on judicial review; or

(15) Admitted in writing or under oath, during the course of an official investigation or other proceedings, acts or omissions that would constitute grounds for conviction or liability under any law or statute described in §§B and C and subsections D(1)—(14) of this regulation, except as follows (indicate reasons why the affirmations cannot be given, and list any conviction, plea, or imposition of probation before judgment with the date, court, official or administrative body, the sentence or disposition, the name(s) of the person(s) involved and their current positions and responsibilities with the business, and the status of any debarment):

E. AFFIRMATION REGARDING DEBARMENT

I FURTHER AFFIRM THAT:

Neither I, nor to the best of my knowledge, information, and belief, the above business, or any of its officers, directors, partners, controlling stockholders, or any of its employees directly involved in the business's contracting activities, including obtaining or performing contracts with public bodies, has ever been suspended or debarred (including being issued a limited denial of participation) by any public entity, except as follows (list each debarment or suspension providing the dates of the suspension or debarment, the name of the public entity and the status of the proceedings, the name(s) of the person(s) involved and their current positions and responsibilities with the business, the grounds of the debarment or suspension, and the details of each person's involvement in any activity that formed the grounds of the debarment or suspension).

F. AFFIRMATION REGARDING DEBARMENT OF RELATED ENTITIES

I FURTHER AFFIRM THAT:

(1) The business was not established and it does not operate in a manner designed to evade the application of or defeat the purpose of debarment pursuant to Sections 16-101, et seq., of the State Finance and Procurement Article of the Annotated Code of Maryland; and

(2) The business is not a successor, assignee, subsidiary, or affiliate of a suspended or debarred business, except as follows (you must indicate the reasons why the affirmations cannot be given without qualification):

G. SUB-CONTRACT AFFIRMATION

I FURTHER AFFIRM THAT:

Neither I, nor to the best of my knowledge, information, and belief, the above business, has knowingly entered into a contract with a public body under which a person debarred or suspended under Title 16 of the State Finance and Procurement Article of the Annotated Code of Maryland will provide, directly or indirectly, supplies, services, architectural services, construction related services, leases of real property, or construction.

H. AFFIRMATION REGARDING COLLUSION

I FURTHER AFFIRM THAT:

Neither I, nor to the best of my knowledge, information, and belief, the above business has:

(1) Agreed, conspired, connived, or colluded to produce a deceptive show of competition in the compilation of the accompanying bid or offer that is being submitted;

(2) In any manner, directly or indirectly, entered into any agreement of any kind to fix the bid price or price proposal of the bidder or offeror or of any competitor, or otherwise taken any action in restraint of free competitive bidding in connection with the contract for which the accompanying bid or offer is submitted.

I. CERTIFICATION OF TAX PAYMENT

I FURTHER AFFIRM THAT:

Except as validly contested, the business has paid, or has arranged for payment of, all taxes due the State of Maryland and has filed all required returns and reports with the Comptroller of the Treasury, the State Department of Assessments and Taxation, and the Department of Labor, Licensing, and Regulation, as applicable, and will have paid all withholding taxes due the State of Maryland prior to final settlement.

J. CONTINGENT FEES

I FURTHER AFFIRM THAT:

The business has not employed or retained any person, partnership, corporation, or other entity, other than a bona fide employee, bona fide agent, bona fide salesperson, or commercial selling agency working for the business, to solicit or secure the Contract, and that the business has not paid or agreed to pay any person, partnership, corporation, or other entity, other than a bona fide employee, bona fide agent, bona fide salesperson, or commercial selling agency, any fee or any other consideration contingent on the making of the Contract.

K. CERTIFICATION REGARDING INVESTMENTS IN IRAN

(1) The undersigned certifies that, in accordance with State Finance and Procurement Article, §17-705, Annotated Code of Maryland:

(a) It is not identified on the list created by the Board of Public Works as a person engaging in investment activities in Iran as described in State Finance and Procurement Article, §17-702, Annotated Code of Maryland; and

(b) It is not engaging in investment activities in Iran as described in State Finance and Procurement Article, §17-702, Annotated Code of Maryland.

2. The undersigned is unable to make the above certification regarding its investment activities in Iran due to the following activities:

L. CONFLICT MINERALS ORIGINATED IN THE DEMOCRATIC REPUBLIC OF CONGO (FOR SUPPLIES AND SERVICES CONTRACTS)

I FURTHER AFFIRM THAT:

The business has complied with the provisions of State Finance and Procurement Article, §14-413, Annotated Code of Maryland governing proper disclosure of certain information regarding conflict minerals originating in the Democratic Republic of Congo or its neighboring countries as required by federal law.

M. I FURTHER AFFIRM THAT:

Any claims of environmental attributes made relating to a product or service included in the bid or proposal are consistent with the Federal Trade Commission's Guides for the Use of Environmental Marketing Claims as provided in 16 CFR §260, that apply to claims about the environmental attributes of a product, package, or service in connection with the marketing, offering for sale, or sale of such item or service.

N. ACKNOWLEDGEMENT

I ACKNOWLEDGE THAT this Affidavit is to be furnished to the Contract Officer and may be distributed to units of: (1) the State of Maryland; (2) counties or other subdivisions of the State of Maryland; (3) other states; and (4) the federal government. I further acknowledge that this Affidavit is subject to applicable laws of the United States and the State of Maryland, both criminal and civil, and that nothing in this Affidavit or any contract resulting from the submission of this bid or proposal shall be construed to supersede, amend, modify or waive, on behalf of the State of Maryland, or any unit of the State of Maryland having jurisdiction, the exercise of any statutory right or remedy conferred by the Constitution and the laws of Maryland with respect to any misrepresentation made or any violation of the obligations, terms and covenants undertaken by the

above business with respect to (1) this Affidavit, (2) the contract, and (3) other Affidavits comprising part of the contract.

I DO SOLEMNLY DECLARE AND AFFIRM UNDER THE PENALTIES OF PERJURY THAT THE CONTENTS OF THIS AFFIDAVIT ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE, INFORMATION, AND BELIEF.

Date: _____

By: _____ (signature of Authorized Representative and Affiant)

_____ (print name of Authorized Representative and Affiant)

ATTACHMENT B-2

CONFLICT OF INTEREST AFFIDAVIT

CONFLICT OF INTEREST AFFIDAVIT AND DISCLOSURE

- A. “Conflict of interest” means that because of other activities or relationships with other persons, a person is unable or potentially unable to render impartial assistance or advice to the State, or the person’s objectivity in performing the contract work is or might be otherwise impaired, or a person has an unfair competitive advantage.
- B. “Person” has the meaning stated in COMAR 21.01.02.01B(64) and includes a bidder, offeror, contractor, consultant, or subcontractor or subconsultant at any tier, and also includes an employee or agent of any of them if the employee or agent has or will have the authority to control or supervise all or a portion of the work for which a bid or offer is made.
- C. The bidder or offeror warrants that, except as disclosed in §D, below, there are no relevant facts or circumstances now giving rise or which could, in the future, give rise to a conflict of interest.
- D. The following facts or circumstances give rise or could in the future give rise to a conflict of interest (explain detail—attach additional sheets if necessary):

- E. The bidder or offeror agrees that if an actual or potential conflict of interest arises after the date of this Affidavit, the bidder or offeror shall immediately make a full disclosure in writing to the Contract Officer of all relevant facts and circumstances. This disclosure shall include a description of actions which the bidder or offeror has taken and proposes to take to avoid, mitigate, or neutralize the actual or potential conflict of interest. If the Contract has been awarded and performance of the Contract has begun, the contractor shall continue performance until notified by the Contract Officer of any contrary action to be taken.

I DO SOLEMNLY DECLARE AND AFFIRM UNDER THE PENALTIES OF PERJURY THAT THE CONTENTS OF THIS AFFIDAVIT ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE, INFORMATION, AND BELIEF.

Date: _____

By: _____
(Authorized Representative and Affiant)

ATTACHMENT C
CONFLICT OF INTEREST PROVISIONS

1. General. If a conflict of interest arises, the Offeror must be willing to continue to represent the Department and the OAG and be in a position to inform other existing or potential clients that they must find representation elsewhere in particular situations. The Attorney General reserves the right, in his sole discretion, to select another contractor or firm to represent the Department and the OAG if a conflict is not resolved to his satisfaction.

Conflicts may arise not only from attorneys named on the Contract but also from representation of parties to transactions involving the Department and the OAG by any member of the firm, regardless of whether that attorney is in the same office or a branch office. For purposes of determining whether or not there is a conflict, the Offeror is understood to have a conflict if, for example:

- (a) any attorney in the firm represents a broker-dealer, investment provider, borrower, lender, or any other party to a bond issuance by the Department; or
 - (b) any attorney in the firm represents another party to a transaction financed with proceeds of Bonds issued by MIDFA or another financing involving the Department; or
 - (c) any attorney in the firm represents a party suing or being sued by the Department or the OAG.
2. Conflict Check System. The Offeror shall describe in detail its existing system for identifying conflicts of interest in undertaking new representation. The description shall include information about who maintains the central records, how often information is updated, and at what stage of representation the check is made. The Offeror shall provide a copy of its written conflicts policy or explain in detail why there is no written policy.
3. Potential Conflicts. Prior to entering into a contract, the Contractor shall provide assurances that potential conflicts have been discussed with other existing clients of the Contractor who might be requested to engage other counsel for a specific transaction, and that those existing clients are amenable to such an inconvenience.
4. Resolving Conflicts. The Offeror shall identify any conflicts of interest which may arise if the Offeror serves as counsel to the Department and shall describe how it proposes to avoid such conflicts. The Contract will require the Contractor to notify the Contract Officer immediately of any potential conflicts of interest and to undertake immediate action to eliminate the source of the potential conflict. The Contract Officer, the Department and the OAG reserve the right to make the Contractor aware of situations which may present a conflict of interest and require the Contractor to promptly remedy the situation to the satisfaction of the Contract Officer.

ATTACHMENT D
PRICE PROPOSAL

Name and Address of Offeror:

1. **For the Initial Three-Year Contract Term**, the blended fixed hourly rate for all attorneys rendering services under this Contract:

\$_____ per hour (Attorney Rate)

2. **For the Initial Three-Year Contract Term**, the blended fixed hourly rate for all para-professionals rendering services under this Contract:

\$_____ per hour (Para-professional Rate)

3. **For the Renewal Term, if any**, the blended fixed hourly rate for all attorneys rendering services under this Contract:

\$_____ per hour (Attorney Rate)

4. **For the Renewal Term, if any**, the blended fixed hourly rate for all para-professionals rendering services under this Contract:

\$_____ per hour (Para-professional Rate)

The undersigned certifies for the Offeror that he or she is authorized to sign this Price Proposal and, to the best of his or her knowledge, the information submitted in this Price Proposal is accurate, complete, and correct as of the date set forth below.

Date

Signature

Printed Name

Title

ATTACHMENT E
FORM CONTRACT

BOND COUNSEL CONTRACT
MARYLAND DEPARTMENT OF COMMERCE

This Bond Counsel Contract (this “**Contract**”), dated as of the ____ day of _____, 2016, is made by and between the Attorney General of the State of Maryland (the “**Attorney General**”) on behalf of the Maryland Industrial Development Financing Authority (“**MIDFA**”) of the Maryland Department of Commerce (“the **Department**”) of the State of Maryland (the “**State**”), and _____, whose Federal Tax Identification Number is _____ (the “**Contractor**”).

1. Contract.

1.1 Contract Documents. This Contract consists of the matters identified in this Section 1.1 (the “**Contract Documents**”), all of which are part of this Contract as if fully set forth herein (all as amended from time to time):

A. This Contract consisting of pages 1 through 11 and all Exhibits thereto (the “**Standard Contract**”);

B. Attachment A: Request for Proposals for Special Assistant Bond counsel dated _____, 2016 (the “**RFP**”);

C. Attachment B: Contractor’s Technical Proposal and Price Proposal dated _____, 2016 (collectively, the “**Proposal**”; the RFP and the Proposal being referred to as the “**Solicitation Documents**”); and

D. Attachment C: Contract Affidavit (the “**Affidavit**”).

The obligations, representations, terms and conditions set forth in the Solicitation Documents and the Affidavit are provisions of this Contract and are supplemental to the provisions set forth in the Standard Contract.

If there are any inconsistencies between or among the Standard Contract or Attachments A, B, or C, the Contract Documents shall control in the following order of priority: Standard Contract, then Attachment A, then Attachment B, then Attachment C.

1.2 Contract Term. This Contract shall commence on _____, 2016 (the “**Commencement Date**”) and shall expire on the later of (a) three years after the Commencement Date (the “**Expiration Date**”), or (b) upon completion of all work authorized on or before the Expiration Date, unless renewed or sooner terminated in accordance with this Contract. At the option of the Attorney General, this Contract may be renewed for one or more additional terms not to exceed two years in the aggregate. The Contractor shall be notified prior to the end of the initial term whether the Contract will be renewed and what the length of the renewal term (if any) will

be. The blended fixed hourly rates of compensation specified in Section 3.1C(ii) of this Contract shall apply to such renewal term.

2. Scope of Services.

2.1 A. The general scope of work for this Contract is set forth in the Contract Documents. The Contractor shall provide these services in accordance with the terms and conditions of this Contract. The Attorney General shall have the unilateral right to require changes in the scope of services, provided such changes are within the general scope of the work to be performed.

B. [Except as specified in Section 2.4 below, the] [The] Contractor shall serve as special assistant bond counsel to the Department and the Attorney General and subject to the terms and conditions of this Contract shall provide the services set forth in the RFP (Attachment A to this Contract). In addition, the Contractor shall perform and be bound by any and all obligations set forth in the RFP and the Proposal (Attachments A and B to this Contract).

2.2 All legal services are to be provided only at the request of the Contract Officer (as defined in Section 4) or designees. The Contractor may not devote time to any or all of the services to be performed, or incur expenses, absent the prior authorization of the Contract Officer or the Contract Officer's designees. All advice is to be provided directly to the Contract Officer or individuals identified by the Contract Officer. The Contractor is not authorized generally to enter into discussions with either the Department's personnel or its customers, clients, or other advisors.

2.3 The Contractor shall familiarize itself with the Department's programs without cost to the Department, the Attorney General, or the State.

[2.4 The Contractor shall not be responsible for advising the Department with respect to the bond issues in progress listed in Exhibit A attached hereto and made a part hereof.]

3. Compensation and Method of Payment.

3.1 Except as provided in Section 3.2 below, the Contractor will be paid for services rendered under this Contract as follows:

A. The Contractor will be paid either (a) after the issuance of each bond issue for which services were performed, out of the proceeds of the bond issue, by the borrower thereunder, or directly or indirectly by the Department; or (b) for services unrelated to a specific issuance of bonds, from time to time, but not more often than monthly, out of the funds, if any, that may be appropriated or may otherwise be made available for such payment.

B. Payments to the Contractor will be based upon a reasonable number of actual hours expended by the Contractor's attorneys and para-professionals in the performance of the services, as approved by the Contract Officer or designees and the Department. The Contractor shall submit detailed invoices setting forth the name of the attorney or para-professional providing services, the date of such services, a full description of the services performed, the hourly

rate being charged, and the hours or fractional hours worked. The approved number of hours will be multiplied by the blended fixed hourly rates of compensation listed in Section 3.1.C below.

C. (i) The blended fixed hourly rate of compensation for each attorney performing services under the initial term of this Contract shall be \$_____ per hour and the blended fixed hourly rate of compensation for each para-professional performing services under the initial term of this Contract shall be \$_____ per hour.

(ii) The blended fixed hourly rate of compensation for each attorney performing services under any renewal of this Contract shall be \$_____ per hour and the blended fixed hourly rate of compensation for each para-professional performing services under any renewal of this Contract shall be \$_____ per hour.

3.2 If the Contractor performs services for a proposed bond issue or transaction and the bonds are not issued or the transaction is not closed, the Contractor, on a case-by-case basis, may be compensated for all or a portion of such services, at the sole discretion of the Contract Officer or designees, at the rate of compensation listed in Section 3.1.C above if funds for such compensation are appropriated or are made available for such payment, and if approved by the Department.

3.3 The Contractor will:

A. during the term of the Contract, be reimbursed for all reasonable, allowable and allocable direct costs and expenses incurred by the Contractor in the performance of this Contract, subject to the terms and conditions set forth in the RFP, the approval of the Contract Officer, and the rates set forth in the State's standard travel regulations, as amended from time to time;

B. not be reimbursed for indirect costs such as secretarial services, employee overtime costs (including para-professional overtime costs), photocopying in connection with services unrelated to specific issuance of bonds, in-house messenger services, or long distance telephone or telefax message service between the Contractor and the Department or the Office of the Attorney General (the "OAG"), or between co-venturers of a joint venture Contractor; and

C. maintain records relating to the costs and expenses incurred by the Contractor in the performance of this Contract for a period of three years from the date of final payment under this Contract.

Non-reimbursed expenses may not be recovered indirectly through "time" charges.

3.4 The Contractor shall submit invoices to the Contract Officer or designees at the times or for the periods required by the Contract Officer or designees, for costs and expenses incurred, itemized in a manner satisfactory to the Contract Officer or designees and in accordance with Section 3.1B. Each invoice shall indicate the Contractor's Federal Tax Identification Number.

3.5 The Department shall not withhold federal, State, and local taxes and FICA taxes, if any, from payments made pursuant to this Contract.

4. Contract Officer. The Contract Officer for this Contract is Barbara Curnin Kountz, Assistant Attorney General and Deputy Counsel to the Department.

5. Contract Modification. This Contract including the Attachments constitutes the entire agreement between the parties and any other communications between the parties before the execution of this Contract, whether written or oral, with reference to the subject matter of this Contract, are superseded by the agreements contained herein. This Contract may not be modified, amended, changed, or altered except by written instrument executed by the parties hereto and approved by the Contract Officer.

6. Governing Law. This Contract shall be governed by the laws of the State of Maryland.

7. Nondiscrimination. The Contractor shall comply with all applicable federal and State laws, rules and regulations, and policies and procedures of the OAG and the State, involving nondiscrimination on the basis of race, color, creed, political or religious opinion or affiliation, marital status, sexual orientation, national origin, age, gender, ancestry, or disability of a qualified individual with a disability.

8. Contractor Responsibilities. The Contractor shall assume sole responsibility for all work to be performed under this Contract. The Contractor shall perform the services with the standard of care, skill, and diligence normally provided by nationally recognized bond counsel in the performance of services similar to the services to be performed hereunder. The Contractor shall not make any changes in the composition of the Legal Team specified by the Contractor pursuant to the RFP without the prior written consent of the Contract Officer or designees. Any change to the composition of the Legal Team without the prior written consent of the Contract Officer or designees may be deemed an event of default by the Contractor under this Contract. The Contractor confirms by its signature that it is thoroughly qualified and familiar with all required duties and responsibilities and will discharge the same diligently, fully, and properly, on an independent contractor basis, and in accordance with all ethical and professional duties and obligations.

9. Subcontracting. The Contractor shall not subcontract, in whole or in part, for any of the services to be performed under this Contract, without the prior written consent of the Attorney General and the Contract Officer.

10. Assignment of Contract. The Contractor shall not assign, transfer, convey or otherwise dispose of this Contract or any rights created hereunder to any person, firm, partnership, company, corporation or other entity without the prior written consent of the Attorney General and the Contract Officer.

11. Dissemination of Information. During the term of this Contract, the Contractor, without the prior written consent of the Contract Officer, (a) shall not (and shall not permit its agents or employees to) release, disseminate, publish, distribute or circulate, in any manner whatsoever any information, data, document or materials related to the services or performance of the services under this Contract or to this Contract, and (b) shall not publish any final reports or documents. The products of the efforts of the Contractor shall become and remain property of the

Attorney General, and the Contractor will, at all times, keep the Contract Officer informed of efforts and progress made in the performance of its duties, or any other such duties as may be assigned.

12. Contingent Fee Prohibition. The Contractor warrants that it has not employed or retained any person, partnership, corporation, or other entity, other than a bona fide employee or agent working for the Contractor, to solicit or secure this Contract, and that it has not paid or agreed to pay any person, partnership, corporation, or other entity, other than a bona fide employee or agent, any fee or any other consideration contingent on the making of this Contract. For breach or violation of this warranty, the Attorney General shall have the right to deduct from this Contract, such price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift or contingent fee.

13. Itemization of Expenses and Retention of Records.

A. The Contractor shall maintain, for each individual attorney and para-professional performing services on behalf of the Contractor under this Contract, complete time records pertaining to and documenting the Contract services. A summary of the time records (and any coding symbols necessary to interpret the records) indicating the name of the attorney or para-professional, the services rendered, the hourly rate being charged, and the amount of time spent by each such individual performing such work shall be available to the Contract Officer or designees, the Department or the OAG, and any auditors acting on their behalf, at all reasonable times during the term of this Contract and for a period of three years after the termination of this Contract.

B. The Contractor shall retain and maintain all records and documents relating to this Contract for three years after final payment hereunder or any applicable statute of limitations, whichever is longer, and shall make them available for inspection and audit by authorized representatives of the State, including the Contract Officer or designees, at all reasonable times.

14. Financial Disclosure. The Contractor shall comply with Section 13-221 of the State Finance and Procurement Article of the Annotated Code of Maryland, which requires that every business that enters into contracts, leases or other agreements with the State or its agencies and receives in the aggregate \$100,000 or more during a calendar year shall, within 30 days of the time when the \$100,000 amount is reached, file with the Secretary of State certain specified information to include disclosure of beneficial ownership of the business.

15. Professional Liability and Insurance. The Contractor shall maintain in full force and effect during the term of this Contract professional liability insurance in an aggregate amount of not less than \$5,000,000, which liability insurance shall include coverage for practice in the fields of tax and securities law. The Contractor agrees that thereafter it shall maintain for the entire period in which it and each of the attorneys on the Legal Team (subject to any applicable statute of limitations) may incur professional liability in connection with the performance or failure to perform services under this Contract, professional liability insurance in the aggregate amount of not less than \$5,000,000, which liability shall include coverage for practice in the fields of tax and securities law. However, if the Contractor is a joint venture, and provided that one venturing entity maintains the required insurance policy, the requirement of the Contractor to maintain

insurance shall be satisfied if both joint venturers submit evidence to the Contract Officer (for prior written approval in the Contract Officer's sole discretion) that all members of the joint venture will have such coverage either through actual insurance policies or the equivalent.

16. Conflicts.

A. The Contractor agrees that during the term of this Contract it will not represent, or provide any service for, any parties whose interests are in conflict with the interests of the Department and/or the OAG. To avoid potential conflicts of interest which may arise from the Contractor's simultaneous representation of the Department and parties participating in transactions with the Department and/or the OAG and/or engaged in litigation with the Department and/or the OAG, the Contractor agrees to examine its client/matter listings carefully on a periodic basis, to notify the Contract Officer or designees immediately of any potential conflict of interest and, if requested, to undertake immediate action to eliminate the source of the potential conflict of interest to the satisfaction of the Contract Officer or designees.

B. The Contractor shall not permit the occurrence or continuance of a violation of Title 5 of the General Provisions Article of the Annotated Code of Maryland (the "**Public Ethics Law**") in connection with this Contract.

C. The Department and/or the Contract Officer or designees reserve the right to make the Contractor aware of situations in which they believe the Contractor is involved which may present a conflict of interest or violation of the Public Ethics Law and to request that the Contractor promptly remedy the situation.

D. By executing this Contract, the Contractor hereby acknowledges and agrees that, upon request of the Attorney General and the Contract Officer or designees, the Contractor, to the extent permitted by the Lawyers' Rules of Professional Conduct, will withdraw from representation of parties whose interests are adversary with the interests of the Department and/or the OAG. In the event the Contractor is unable to perform any service or provide any legal representation or legal advice requested by the Department or the OAG during the term hereof because of a conflict of interest, the Contractor, at the request of the Attorney General in his sole discretion, may be asked to subcontract or assign the specific request for legal service, legal representation or legal advice to other legal counsel and, in such event, the other legal counsel shall be subject to the prior approval of the Attorney General and to all terms and conditions under this Contract. The Contractor hereby further acknowledges that the Attorney General reserves the right, in his sole discretion, to select another law firm as bond counsel to represent the Department and/or OAG in a particular matter if the conflict of interest is not resolved to the satisfaction of the Attorney General.

17. Compliance with Law. The Contractor hereby represents and warrants that:

A. It is qualified to do business in the State and that it will take such action as, from time to time, may be necessary to remain so qualified.

B. It is not in arrears with respect to the payment of any moneys due and owing the State, or any department or unit thereof, including, but not limited to, the payment of taxes and employee benefits, and that it shall not become so in arrears during the term of this Contract.

C. It shall comply with all federal, State and local laws, ordinances, rules, and regulations applicable to its activities and obligations under this Contract.

D. It shall obtain, at its expense, all licenses, permits, insurance, and governmental approvals, if any, necessary to the performance of its obligations under this Contract.

18. Non-Hiring of Employees. No official or employee of the State, whose duties as such official or employee include matters relating to or affecting the subject matter of this Contract, shall, during the pendency and term of this Contract and while serving as an official or employee of the State, become or be an employee of the party or parties hereby contracting with the State, or any entity that is a subcontractor under this Contract.

19. Termination of Contract for Default. If the Contractor fails to fulfill its obligations under this Contract properly and on time, or otherwise violates any provisions of this Contract, the Attorney General may terminate this Contract by written notice to the Contractor. The notice shall specify the acts or omissions relied on as cause for termination. All finished or unfinished services provided by the Contractor, shall, at the Attorney General's option, become the property of the Attorney General provided the Department has paid the sums, if any, due to the Contractor pursuant to this Section 19. The Department shall pay the Contractor (a) fair and equitable compensation (based upon the rates of compensation described in Section 3 hereof) for satisfactory performance prior to receipt of notice of termination, and (b) all expenses reimbursable under this Contract incurred by the Contractor prior to receipt of such notice, less the amount of damages caused by the Contractor's breach. If the damages are more than the compensation payable to the Contractor, the Contractor will remain liable after termination and the Attorney General or the Department can affirmatively collect damages.

20. Termination of Contract for Convenience. The performance of work under this Contract may be terminated by the Attorney General in accordance with this clause in whole, or from time to time in part, whenever the Attorney General shall determine that such termination is in the best interest of the Attorney General, the Department, or the State. The Department will pay the Contractor (a) compensation for services satisfactorily performed prior to the date of termination based upon the rates set forth in Section 3 hereof, and (b) all reasonable expenses incurred by the Contractor prior to such date of termination.

21. Indemnification.

A. The Contractor, within the limitations of the Lawyers' Rules of Professional Conduct, shall indemnify, hold harmless and, upon request, defend, the Attorney General, the Department, the State, and their respective officers, members, agents and employees (the "**Indemnitees**") from and against all claims, suits, judgments, expenses, actions, damages, and costs (including reasonable attorney's fees) of every name and description, arising out of or resulting from the performance of or failure to perform the services of the Contractor under this Contract or a breach of any or all of the Contractor's obligations under this Contract.

B. The State has no obligation to provide legal counsel or defense to the Contractor or its subcontractors in the event that a suit, claim, or action of any character is brought

by any person not party to this Contract against the Contractor or its subcontractors as a result of or relating to the Contractor's obligations under this Contract.

C. The State has no obligation for the payment of any judgments or the settlement of any claims against the Contractor or its subcontractors as a result of or relating to the Contractor's obligations under this Contract.

D. The Attorney General, the Department and the State shall not assume any obligation to indemnify, hold harmless, or pay attorney's fees that may arise from or in any way be associated with the performance or operation of this Contract.

E. The Contractor shall immediately notify the Contract Officer or designees of any claim or suit made or filed against the Contractor or its subcontractors resulting from or relating to the Contractor's obligations under the Contract, and will cooperate, assist, and consult with the Indemnitees in the defense or investigation of any claim, suit, or action made or filed against the State as a result of or relating to the Contractor's performance under this Contract.

22. Correction of Errors, Defects and Omissions. The Contractor, upon request, agrees to perform work as may be necessary to correct errors, defects, and omissions in the services required under this Contract, without undue delay and without cost to the Department or the OAG. The acceptance of the work set forth herein by the Contract Officer or designees, shall not relieve the Contractor of the responsibility of subsequent correction of such errors.

23. Political Contribution Disclosure. The Contractor shall comply with Election Law Article, Sections 14-101 through 14-108, Annotated Code of Maryland, which requires that every person that enters into contracts, leases, or other agreements with the State, a county, or an incorporated municipality, or their agencies, during a calendar year in which the person receives in the aggregate \$200,000 or more, shall file with the State Board of Elections a statement disclosing contributions in excess of \$500 made during the reporting period to a candidate for elective office in any primary or general election. The statement shall be filed with the State Board of Elections: (1) before a purchase or execution of a lease or contract by the State, a county, an incorporated municipality, or their agencies, and shall cover the preceding two calendar years; and (2) if the contribution is made after the execution of a lease or contract, then twice a year, throughout the contract term, on (a) February 5, to cover the six month period ending January 31; and (b) August 5, to cover the six month period ending July 31.

24. Termination of Multi-Year Contract. If funds are not appropriated or if funds are not otherwise made available for the continued performance of this Contract at any time during the Contract term, this Contract shall be canceled as of the time for which funds were not appropriated or otherwise made available; however, this will not affect the Attorney General's rights under any other termination clause of this Contract. The effect of termination of this Contract pursuant to this Section will be to discharge the Contractor, the Attorney General, and the Department from future performance of this Contract, but not from their obligations existing at the time of termination. The Contractor shall be paid (a) compensation for services satisfactorily performed prior to the date of termination based upon the rates set forth in Section 3 hereof, and (b) all reasonable expenses incurred by the Contractor prior to such date of termination. The

Attorney General shall notify the Contractor within thirty days prior to the termination of this Contract pursuant to this Section.

25. Ownership of Documents and Materials.

A. The Contractor agrees that all documents and materials (in any formats or media whatsoever) in the Contractor's possession or control, including but not limited to all bond documents, loan documents, program documents, official statements, certificates, and other documents related thereto, and drafts of and forms for such documents, prepared by or for the Contractor under the terms of this Contract (collectively, the "**Files**") shall at any time during the performance of the services be made available to the Attorney General upon request by the Attorney General or the Contract Officer or designees and shall become and remain the property of the Attorney General upon expiration of this Contract or completion of the services from time to time. The Attorney General shall have the right to use the Files without restriction or limitation and without compensation to the Contractor other than that provided in this Contract.

B. Immediately upon termination or expiration of this Contract, upon request, the Contractor shall deliver the Files to the Contract Officer or designees or to a location within the State designated by the Contract Officer or designees. The Contractor shall have the right to retain copies of those portions of the Files which the Contractor reasonably requires for professional liability purposes.

26. Procurement Regulations. This Contract is not subject to the provisions of Division II of the State Finance and Procurement Article of the Annotated Code of Maryland or State procurement regulations as set forth in COMAR Title 21 (collectively the "**Procurement Law**"). Nonetheless, the requirements of the Procurement Law will be applied to this Contract to the extent practicable and consistent with obtaining the best legal counsel for the State, all as determined in the Contract Officer's sole discretion. The dispute resolution and appeal procedures contained in the Procurement Law will not apply to this Contract.

27. No Assurance of Work. The Contractor acknowledges that the Attorney General may award additional contracts for special assistant bond counsel for the Department. The Contractor further acknowledges that it has received no assurances of any minimum amount or type of work under this Contract. The Contract Officer, or designees, shall have the sole discretion to determine which contractor shall be assigned to handle a particular transaction and shall have the further right to assign a particular transaction to another contractor if the Contract Officer or designees determines such action to be in the best interest of the Department.

28. Contract Affidavit. Attached to this Contract as Attachment C is the Contract Affidavit which has been completed and signed on behalf of the Contractor and which contains certifications of the Contractor with regard to corporate registration, tax payment and other matters.

29. Notices. Service of any notice under this Contract shall be complete upon receipt of such notice, mailed through the United States mail, postage prepaid, or hand delivered to the Contract Officer or designees, if such notice is to Barbara Curnin Kountz, Assistant Attorney General, Maryland Department of Commerce, 401 East Pratt Street, Baltimore, Maryland 21202,

or to the person executing this Contract on behalf of the Contractor, if such notice is given to the Contractor, at _____, _____, Maryland _____.

30. Cost and Price Certification. The Contractor has submitted cost or price information and certifies that, to the best of its knowledge, the information submitted is accurate, complete and current as of the Commencement Date. The prices under this Contract or any Contract modification, including profit or fee, shall be adjusted to exclude any significant price increases occurring because the Contractor furnished cost or price information which, as of the Commencement Date, was inaccurate, incomplete or not current.

31. Waiver. The waiver by either party hereto of a breach of any provision of this Contract shall not operate or be construed as a waiver of any subsequent breach by either party.

32. Suspension of Work. The Contract Officer unilaterally may order the Contractor in writing to suspend, delay, or interrupt all or any part of the work for such period of time as the Contract Officer may determine to be appropriate for the convenience of the State.

33. Effective Date. This Contract shall take effect upon approval and execution by the Attorney General, provided it has first been duly executed by the Contractor.

WITNESS the following signatures and seals:

WITNESS:

CONTRACTOR:

By:

(Typed Name)

(Typed Title)

(Date)

(Taxpayer Identification Number)

WITNESS:

**THE ATTORNEY GENERAL OF
THE STATE OF MARYLAND**

By:

Brian E. Frosh

(Date)

Approved for form and legal sufficiency:

Assistant Attorney General

(Date)

REVIEWED AND ACKNOWLEDGED—FUNDING AVAILABLE:

MARYLAND DEPARTMENT OF COMMERCE

By:

Name: _____
Title: _____

Date

ATTACHMENT F
CONTRACT AFFIDAVIT

A. AUTHORITY

I HEREBY AFFIRM THAT:

I, (print name) _____, possess the legal authority to make this Affidavit on behalf of (print business name) _____.

B. CERTIFICATION OF REGISTRATION OR QUALIFICATION WITH THE STATE DEPARTMENT OF ASSESSMENTS AND TAXATION

I FURTHER AFFIRM THAT:

The business named above is a (check applicable items):

- (1) Corporation — ___ domestic or ___ foreign;
- (2) Limited Liability Company — ___ domestic or ___ foreign;
- (3) Partnership — ___ domestic or ___ foreign;
- (4) Statutory Trust — ___ domestic or ___ foreign;
- (5) ___ Sole Proprietorship

and is registered or qualified as required under Maryland Law.

I further affirm that the above business is in good standing both in Maryland and (IF APPLICABLE) in the jurisdiction where it is presently organized, and has filed all of its annual reports, together with filing fees, with the Maryland State Department of Assessments and Taxation. The name and address of its resident agent (IF APPLICABLE) filed with the State Department of Assessments and Taxation is:

Name: _____

Address: _____

and that if it does business under a trade name, it has filed a certificate with the State Department of Assessments and Taxation that correctly identifies the true name and address of the principal or owner as:

Name and Department ID Number: _____

Address: _____

C. FINANCIAL DISCLOSURE AFFIRMATION

I FURTHER AFFIRM THAT:

I am aware of, and the above business will comply with, the provisions of State Finance and Procurement Article, §13-221, Annotated Code of Maryland, which require that every business that enters into contracts, leases, or other agreements with the State of Maryland or its agencies during a calendar year under which the business is to receive in the aggregate \$100,000 or more shall, within 30 days of the time when the aggregate value of the contracts, leases, or other agreements reaches \$100,000, file with the Secretary of State of Maryland certain specified information to include disclosure of beneficial ownership of the business.

D. POLITICAL CONTRIBUTION DISCLOSURE AFFIRMATION

I FURTHER AFFIRM THAT:

I am aware of, and the above business will comply with, Election Law Article, §§14-101 to 14-108, Annotated Code of Maryland, which requires that every person that enters into contracts, leases, or other agreements with the State of Maryland, including its agencies or a political subdivision of the State, during a calendar year in which the person receives in the aggregate \$200,000 or more shall file with the State Board of Elections a statement disclosing contributions in excess of \$500 made during the reporting period to a candidate for elective office in any primary or general election.

E. DRUG AND ALCOHOL FREE WORKPLACE

(Applicable to all contracts unless the contract is for a law enforcement agency and the agency head or the agency head's designee has determined that application of COMAR 21.11.08 and this certification would be inappropriate in connection with the law enforcement agency's undercover operations.)

I CERTIFY THAT:

- (1) Terms defined in COMAR 21.11.08 shall have the same meanings when used in this certification.
- (2) By submission of its bid or offer, the business, if other than an individual, certifies and agrees that, with respect to its employees to be employed under a contract resulting from this solicitation, the business shall:
 - (a) Maintain a workplace free of drug and alcohol abuse during the term of the Contract;
 - (b) Publish a statement notifying its employees that the unlawful manufacture, distribution, dispensing, possession, or use of drugs, and the abuse of drugs or alcohol is prohibited in the business's workplace and specifying the

actions that will be taken against employees for violation of these prohibitions;

- (c) Prohibit its employees from working under the influence of drugs or alcohol;
- (d) Not hire or assign to work on the Contract anyone who the business knows, or in the exercise of due diligence should know, currently abuses drugs or alcohol and is not actively engaged in a bona fide drug or alcohol abuse assistance or rehabilitation program;
- (e) Promptly inform the appropriate law enforcement agency of every drug-related crime that occurs in its workplace if the business has observed the violation or otherwise has reliable information that a violation has occurred;
- (f) Establish drug and alcohol abuse awareness programs to inform its employees about:
 - (i) The dangers of drug and alcohol abuse in the workplace;
 - (ii) The business's policy of maintaining a drug and alcohol free workplace;
 - (iii) Any available drug and alcohol counseling, rehabilitation, and employee assistance programs; and
 - (iv) The penalties that may be imposed upon employees who abuse drugs and alcohol in the workplace;
- (g) Provide all employees engaged in the performance of the Contract with a copy of the statement required by §E(2)(b), above;
- (h) Notify its employees in the statement required by §E(2)(b), above, that as a condition of continued employment on the Contract, the employee shall:
 - (i) Abide by the terms of the statement; and
 - (ii) Notify the employer of any criminal drug or alcohol abuse conviction for an offense occurring in the workplace not later than 5 days after a conviction;
- (i) Notify the Contract Officer within 10 days after receiving notice under §E(2)(h)(ii), above, or otherwise receiving actual notice of a conviction;
- (j) Within 30 days after receiving notice under §E(2)(h)(ii), above, or otherwise receiving actual notice of a conviction, impose either of the following sanctions or remedial measures on any employee who is convicted of a drug or alcohol abuse offense occurring in the workplace:

- (i) Take appropriate personnel action against an employee, up to and including termination; or
 - (ii) Require an employee to satisfactorily participate in a bona fide drug or alcohol abuse assistance or rehabilitation program; and
- (k) Make a good faith effort to maintain a drug and alcohol free workplace through implementation of §E(2)(a) through (j), above.
- (3) If the business is an individual, the individual shall certify and agree as set forth in §E(4), below, that the individual shall not engage in the unlawful manufacture, distribution, dispensing, possession, or use of drugs or the abuse of drugs or alcohol in the performance of the Contract.
- (4) I acknowledge and agree that:
 - (a) The award of the Contract is conditional upon compliance with COMAR 21.11.08 and this certification;
 - (b) The violation of the provisions of COMAR 21.11.08 or this certification shall be cause to suspend payments under, or terminate the Contract for default under COMAR 21.07.01.11 or 21.07.03.15, as applicable; and
 - (c) The violation of the provisions of COMAR 21.11.08 or this certification in connection with the Contract may, in the exercise of the discretion of the Board of Public Works, result in suspension and debarment of the business under COMAR 21.08.03.

F. CERTAIN AFFIRMATIONS VALID

I FURTHER AFFIRM THAT:

To the best of my knowledge, information, and belief, each of the affirmations, certifications, or acknowledgments contained in that certain Bid/Proposal Affidavit dated _____, 2016, and executed by me for the purpose of obtaining the Contract to which this Exhibit is attached remains true and correct in all respects as if made as of the date of this Contract Affidavit and as if fully set forth herein.

**I DO SOLEMNLY DECLARE AND AFFIRM UNDER THE PENALTIES OF PERJURY
THAT THE CONTENTS OF THIS AFFIDAVIT ARE TRUE AND CORRECT TO THE
BEST OF MY KNOWLEDGE, INFORMATION, AND BELIEF.**

Date: _____

By: _____
(signature of Authorized Representative and Affiant)

(print name of Authorized Representative and Affiant)